



STAFF REVIEW

Variance Case #: V2014-06

Legistar #: 20140283

City Council Hearing: Wednesday, April 9, 2014 – 7:00 p.m.

Property Owner: Bercher Homes, LLC
Suite 100
800 Kennesaw Avenue
Marietta, GA 30060

Representative: J. Kevin Moore, Esq.
Moore Ingram Johnson & Steele, LLP
Emerson Overlook
326 Roswell Street
Marietta, GA 30060

Address: 224 and 226 Crescent Circle

Land Lot: 12310 District: 16 Parcels: 0260 and 0270

Council Ward: 3A

Existing Zoning: OI (Office Institutional)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to reduce the rear yard setback from 25' to 0.' [*§712.09 (G.2.b.ii.)*]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



224 & 226 Crescent Circle



View of residences to the west



Subject property from the rear, looking towards Crescent Circle

Staff Analysis:

J. Kevin Moore, attorney for the property owner, is requesting a variance to reduce the required rear yard setback for the two properties located at 224 and 226 Crescent Circle. Together the two properties contain 0.73 acres, are zoned OI (Office Institutional), and are vacant. The properties located immediately to the north, south, and southeast are also zoned OI. The East Maxwell Commons residential development, constructed in 2002, lies directly to the west and is zoned R-4 (Single Family Residential – 4 units/acre). This property lies within the Commercial Corridor Design Overlay – Tier B.

The applicant is requesting a reduction in the rear yard setback from 25' to 0' in order to potentially develop the property. Typically the OI zoning district requires a 35' rear setback but, because this property is in the overlay district, a 25' rear setback applies. The properties zoned for single family residential use directly to the west will also require the application of a 30' undisturbed (or replanted, if sparsely vegetated) buffer in addition to the required setback. This would push any building constructed on the subject property a minimum of 55' from the rear property line and would drastically reduce the buildable area of the parcel. However, the intent of the Commercial Corridor Design Overlay is to help frame the street by shifting buildings towards the sidewalk, which is encouraged by having a maximum (rather than a minimum) front setback for properties located within the Overlay.

Most of the southwestern portion of the site is unbuildable because of a sanitary sewer easement, stream, and storm drain easement. So even if the variance to reduce the rear setback is approved, a building would not be able to be constructed over the top of an easement. This will likely limit the use of the southwestern portion of the property that is not covered by a buffer to parking only. The stream and easements, paired with the presence of a 30' buffer, should help to provide protection to the adjacent residential properties to the west.

